

REMARKS/ARGUMENTS

Claims 1-46 are pending in the application and are again rejected.

Claims 1-3, 6-27, 32, 34-44 and 46 are finally rejected by Examiner under 35 U.S.C. §102(b) over Kochergin et al. (US 6,819,812). Applicants respectfully disagree.

Applicants submit that a careful study of the prior art cited by the Examiner reveals that the Examiner's 35 U.S.C. §102(b) rejection is improper. In particular, the rejection was made under 35 U.S.C. §102(b), which is not supported by the effective date of the reference. Kochergin et al. (US 6,819,812) has a date of patent of November 16, 2004, with a prior publication date of October 14, 2004. In contrast, the current application, although entering the US national phase on January 27, 2006, had a PCT filing date of August 2, 2004 and a US priority filing date of August 1, 2003. Thus, Kochergin et al. (US 6,819,812) is not a 35 U.S.C. §102(b) reference.

Because Kochergin et al. (US 6,819,812) has a filing date of April 14, 2003, it could potentially qualify as a 35 U.S.C. §102(e) reference. In anticipation that the Examiner would reject the claims based on 35 U.S.C. §102(e), Applicant encloses concurrently herewith a declaration under 37 C.F.R. § 1.131 demonstrating that Applicants were in possession of the instant invention prior to the filing date of the cited patent, namely April 14, 2003. Applicants are submitting this declaration for administrative convenience only, and specifically, such action should not be viewed

as acquiescence on the part of Applicants as to the disclosure of the cited reference or the applicability of that disclosure to the claims of the instant application.

Applicants submit that the declaration is submitted after final rejection but before the filing of an appeal. Applicants submit that the declaration is filed in anticipation of a rejection not currently made by the Examiner, in an effort to expedite prosecution. As such, Applicants submit that there is good and sufficient reason for the submission to be in compliance with 37 CFR § 1.116(e). Applicants respectfully request that the declaration be admitted by the Examiner.

Claims 4, 5, 28-31, 33 and 45 stand rejected under 35 U.S.C. §103(a) as being obvious over Kochergin et al. in view of Thornton (US 7,283,242). Applicants respectfully disagree.

Applicant submits that Kochergin et al. has been discussed above.

Further, with regard to Thornton (US 7,283,242), Applicants note that the patent number cited by the Examiner appears to be in error. The correct number appears to be 7,283,242, not 7,282,242. Applicants submit that it is not prior art unless the filing date of the parent case is taken into consideration. Thornton has a date of patent of October 16, 2007, with a prior publication date of February 10, 2005. Thornton has a filing date of September 1, 2004, and a provisional application filing date of September 2, 2003. As discussed earlier, the current application, although entering the US national phase on January 27, 2006, had a PCT filing date of August 2, 2004 and a US priority filing date of August 1, 2003. Thus, Thornton could not be prior art for the claimed invention. Applicants do note, however, that Thornton is a

CIP of two parent cases that were filed on April 11, 2003. In anticipation that the Examiner might rely on the parent cases' filing date for the rejection, Applicants in the declaration also demonstrate that Applicants were in possession of the instant invention prior to the filing date of the parent applications of Thornton, namely April 11, 2003.

The obviousness rejections of the claims should be withdrawn.

Applicants respectfully submit that claims 1-46 are patentable. Applicants assert that this application is in condition for allowance and such action is earnestly requested.

Early and favorable consideration is respectfully requested.

Respectfully submitted,

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